

BEFORE THE IOWA DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF LAW FIRM OF STEVEN V LAWYER & ASSOC., PLC 4944 PLEASANT ST WEST DES MOINES, IA 50266 SALES AND USE TAX	REFUSAL TO ISSUE DECLARATORY ORDER DOCKET NO. 66246
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Pursuant to a Petition for Declaratory Order ("Petition") filed with the Iowa Department of Revenue ("Department") by the Law Firm of Steven V Lawyer & Assoc. ("Petitioner") on February 9, 2022, and in accordance with Iowa Code section 17A.9 (2022) and Iowa Administrative Code rule 701—7.24(17A) (2022), the Director issues the following order.

I. FACTS AND ISSUES PRESENTED

The findings of fact are based on the Petition. Petitioner is a law firm that periodically collects and pays for medical records from medical providers to be used for clients in connection with their cases. These records are occasionally provided to the Petitioner through a third-party copying service, rather than the medical provider itself. The third-party copying service has been reportedly charging sales tax for these services, while the Petitioner argues these services should be exempt from tax under Iowa Code section 423.3(96).

Petitioner presents one issue for review: Whether sales tax is owed and collectible when a provider, as defined in Iowa Code section 622.10(6)"e"(2), utilizes the

services of a third-party copying service to provide a requester copies of medical records or bills as described in Iowa Code section 622.10.

II. STANDARD OF REVIEW

Declaratory Orders under the Iowa Administrative Procedure Act

The function of a declaratory order is to provide “reliable advice from an agency as to the applicability of unclear law.” Arthur Earl Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rulemaking Process*, 60 Iowa L. Rev. 731, 805 (1975). Iowa Code section 17A.9 contemplates declaratory orders by administrative agencies on a disclosed set of facts. *City of Des Moines v. Pub. Emp. Rels. Bd.*, 275 N.W.2d 753, 758 (Iowa 1979). A declaratory order enables the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts. Bonfield, *supra*, at 822–23.

It is not the function of a declaratory order to resolve issues involving factual analysis “too complicated to handle outside of an actual adjudication.” *Id.* at 807. A declaratory order is not a “contested case” as defined in Iowa Code section 17A.2(5); namely, it is not an evidentiary hearing, which is a separate administrative remedy set forth in Iowa Code chapter 17A and in the Department’s rules. See Iowa Admin. Code r. 701—7.24(17A). Consequently, for the purposes of any declaratory order, the Director views the issues raised in the petition as questions of law applicable to future factual situations as disclosed in the petition. This view is consistent with Iowa Administrative Code rule 701—7.24(17A) concerning the issuance of declaratory orders.

III. DISCUSSION

The Director refuses to issue a declaratory order in response to the Petition for the following reasons:

- (5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter;
- (6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order;

Iowa Admin. Code r. 701—7.24(9)“a”(5), (6).

The Department’s refund claim process is a better proceeding to determine this issue. That process will allow the Petitioner to submit detailed information and documents to support its claim. In the refund claim review process, the Department could analyze the information and determine whether the Petitioner’s transactions are exempt from tax under the provisions of Iowa Code section 423.3(96) and Iowa Code section 622.10(6)“e”(2). Furthermore, the refund process will afford the Petitioner a better remedy. Unlike a declaratory order, the refund claim would allow the Department to determine the Petitioner’s exemption claim and allow the Petitioner to seek to recover all tax paid that is not barred by the statute of limitations. If the Department’s determination on a refund claim is unfavorable to the Petitioner, the Petitioner would have an opportunity to have an evidentiary hearing to dispute the Department’s determination on a refund claim.

Additionally, a petition for a declaratory order must contain, among other things, “[a] clear and concise statement of all relevant facts on which the order is requested.” Iowa Admin. Code r. 701—7.24(1)“d”(2)“1”. The Petition does not meet this requirement. While the Petition does identify the sections of the Iowa Code

Petitioner requests the Department analyze in its determination of a tax exemption applicability, the Petition fails to provide the particular factual circumstances giving rise to the question presented by the Petitioner. Absent this information, the Director is unable to adequately respond to the questions raised in the Petition. This is further support for the Director's finding that a refund claim would provide a better means to decide the Petitioner's issue.

Issued at Des Moines, Iowa this 14 day of April, 2022.

IOWA DEPARTMENT OF REVENUE

By 
Kraig Paulsen, Director